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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Request for Reimbursement of Noncommercial Lodging Expenses]
FILE: B-198962 DATE: May 12, 1981

MATTER OF: Evacuation Allowances for AID
Employees and Other Dependents
Lodging With Friends and Relatives

DIGEST:

AID evacuees who had initially been authorized the special subsistence allowance on a flat rate basis were advised that the Secretary of State had authorized future payment on lodging-plus basis and that those who stayed with friends or relatives would not be reimbursed any amount for lodgings. Since regulations contemplate payment on per diem basis, Secretary acted properly in authorizing reimbursement based on the lodging-plus system now in effect. Secretary's determination to prohibit reimbursement for noncommercial lodgings is within his authority and consistent with per diem regulation of certain other Federal agencies.

Mr. William A. Miller, Certifying Officer, U.S. Agency for International Development Mission to Bangladesh, requests an advance decision on whether employees evacuated from Bangladesh and authorized a special subsistence expense allowance may be denied lodging expenses while occupying noncommercial facilities. Since the denial of these expenses was mandated by the Secretary of State under a valid use of his authority in the Standardized Regulations (Government Civilians, Foreign Areas), there exists no basis to authorize the expenses.

Between November 29, 1979, and December 6, 1979, employees of the U.S. Agency for International Development (AID) stationed in Bangladesh were evacuated because of unsettled conditions in the Near East and South Asia. The evacuees, employees and their dependents, were authorized travel expenses to a safehaven post and a special subsistence expense allowance (subsistence allowance) to maintain themselves at the safehaven location.

Upon arrival in Washington, D.C., the first evacuees received an AID instruction sheet dated December 1, 1979, which indicated that lodging receipts would not be required

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for payment of the subsistence allowance and that employees who elected to stay with friends and relatives would receive a safehaven subsistence allowance as follows:

"--\$35 per day per adult employee or dependent over 11 years.

"--\$17.50 per day per child 11 and under.

"--60% of the above after 30 days.

"--Maximum of 180 days' subsistence."

These instructions indicated that evacuees staying with friends and relatives would receive the same allowances as those staying in commercial facilities.

This instruction sheet of December 1, 1979, was superseded on December 10, 1979, by new instructions. The new instructions terminated reimbursement on a fixed rate basis and provided that effective December 15, 1979, the subsistence allowance was to be treated in the same manner as a per diem allowance under the lodging-plus system. Employees and adult dependents could be reimbursed up to \$35 a day for the first 30 days. The specifics were that the rate was \$16 a day for subsistence and up to \$19 per day for commercial lodging. For minor dependents, the rates were \$9.50 a day for subsistence and up to \$8 for commercial lodging. These maximum rates were reduced by 40 percent after the first 30 days. Unlike the earlier instructions these required lodging expenses to be documented with receipts from commercial establishments. The superseding instruction states that its issuance was prompted by the determination that AID evacuees should be paid on the same basis as those of other agencies.

On January 10, 1980, the personnel for the AID Mission to Bangladesh who were responsible for processing payment for the evacuees' subsistence allowance cabled AID headquarters and set forth two proposed methods for reimbursing evacuees for lodging expenses incurred in noncommercial facilities. Essentially, the alternate methods were (1) to allow the evacuees staying in noncommercial facilities reimbursement for lodging costs based on amounts paid to friends or relatives to cover the additional expenses incurred by

the host or (2) to give the evacuees staying in noncommercial facilities a reduced fixed rate of \$12 for lodgings without receipts. AID headquarters refused to distribute the cable to the evacuees and informed the Mission to Bangladesh that the Secretary of State had determined not to reimburse lodging expenses to evacuees who stayed in noncommercial facilities.)

(The Secretary of State sent a confirmatory telegram to the AID Mission in Bangladesh on January 17, 1980, which set forth his determination not to authorize reimbursement of lodging expenses in noncommercial facilities.) After receiving this telegram, the personnel for the AID Mission to Bangladesh sought on several occasions to have the AID headquarters administratively reverse this policy without success.

(In requesting this decision, the Certifying Officer indicates that he believes a reversal of the prior action is mandated because the action of the Secretary of State and AID headquarters is contrary to the applicable regulations and that the prior action violates fundamental fairness when applied to the evacuees.) The Certifying Officer suggests that the law and regulations give the Secretary of State authority only to establish a maximum daily rate but not to define the circumstances under which all or a part of that amount may be reimbursed.) Specifically, (he questions whether the Secretary of State may determine "that one employee may be paid no lodging portion of the allowance and that another may be paid the maximum even though both incurred expenses as a result of the evacuation.") In this latter regard, he points to our holding in 55 Comp. Gen. 856 (1976) and states that (employees who stay with friends or relatives usually feel obliged to compensate their hosts for the additional expense and inconvenience caused by their stay, even though those expenses may be difficult to quantify.)

(The general statutory authority for payment of monetary amounts to evacuees) from foreign areas is found at 5 U.S.C. § 5523(a). Essentially, the statute (provides that the head of an agency may provide for payments to employees or their dependents where an evacuation is ordered because of imminent danger to the employees or their dependents.) Among other

things, 5 U.S.C. §§ 5527(a) and (b) provide that the President shall coordinate the programs of executive agencies regarding evacuation allowances and issue implementing regulations for executive agencies. Under 5 U.S.C. § 5527(c), (the head of each executive agency is authorized to issue internal regulations) not inconsistent with those promulgated under the authority of subsection 5527(b).

In Executive Order No. 10982, 27 F.R.3 (December 25, 1961), as amended, (the President delegated the authority to promulgate regulations to the Secretary of State. Section 3(a) of the Executive order requires the Secretary of State, the Office of Personnel Management and heads of other Federal agencies to exercise their authority with respect to evacuees so that employees of different agencies evacuated from the same geographic area under the same general circumstances may be treated uniformly.)

The Secretary of State has promulgated regulations for adoption within the executive branch to implement the authority to pay special allowances incident to an evacuation. These regulations are contained in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600 and they have been adopted by AID. Of these regulations, our concern is with Sections 130 and 131(b)(1)(2), and (3) which are as follows:

"130. Purpose of Special Allowances

"Special allowances specified in sections 131 and 133 are paid to evacuated employees to offset any direct added expenses which are incurred by the employee as a result of his evacuation or the evacuation of his dependents.

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"131. Determining Direct Added Expenses

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"(b) Subsistence Expense Allowance

"Unless otherwise directed by the Secretary of State, a subsistence expense allowance for the evacuated employee or his dependents shall be determined at applicable travel per diem rates for the safehaven post or a station other than the safehaven post; which has been approved by appropriate authority. Such subsistence expense allowance shall be paid as of the date following arrival and may continue until terminated under these regulations. The daily amount of the subsistence expense allowance shall be:

- "(1) The maximum rate of travel per diem for the employee and each dependent who is 11 years of age and over; and one-half such rate for each dependent under 11 years of age. Normally this prescribed maximum rate shall be paid for the first 30 days of evacuation.
- "(2) After 30 days, unless continued payment at the maximum or other rate has been authorized, the subsistence expense allowance shall be computed at 60 percent of the rates prescribed in subparagraph (1). This prescribed rate shall be paid until a determination is made by competent authority that subsistence allowances are no longer authorized but may not exceed in any case 180 days after the evacuation.
- "(3) The daily rate of the subsistence expense allowance actually paid an employee shall be either the maximum rate determined in accordance with 1 and 2 above, or a

lower rate if, in the judgment of the authorizing officer, such lower rate would be more in keeping with the employee's necessary living expenses."

[Those regulations were issued prior to adoption of the lodging-plus system for per diem reimbursement and do not specifically define what lodging costs may be reimbursed as part of the special subsistence expenses allowance. They do contemplate that, in general, the special subsistence expenses allowance paid to evacuees will be based on the per diem rate for the locality to which the employee and his dependents have been evacuated.]

At the time of the particular evacuation in question, the maximum per diem rate payable within the continental United States was \$35. See 5 U.S.C. 5702 in effect at the time. In providing that the maximum rate for the first 30 days of evacuation was limited to \$35 per day and that reimbursement after December 15 would be made on a lodging-plus basis, the Secretary of State did not inappropriately limit the subsistence allowance provided for by Section 131(b)(1), quoted above. He merely implemented that regulation in the context of the lodging-plus system of per diem reimbursement then in effect.

[Under the lodging-plus system, we have held that an employee who stays with a friend or relative may not be reimbursed lodging expenses based on the cost of commercial lodgings.] In 55 Comp. Gen. 856 (1976) referred to by the Certifying Officer, [we specifically held that to be reimbursable the charge for such noncommercial lodgings must be reasonable in amount and necessarily incurred and should reflect the host's additional costs occasioned by the employee's stay.] That decision was addressed to the case in which an agency has not exercised its discretion to establish a specific per diem rate under paragraph 1-7.3c of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973 as amended) or otherwise limited reimbursement on the basis of its responsibility at paragraph 1-7.3a to avoid fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses.

The Uniform State/AID/USIA Foreign Service Travel Regulations, 6 FAM, do not specifically address the subject of lodging cost reimbursement when AID and other covered employees stay with friends or relatives, and we are advised that AID employees who lodge with relatives while on temporary duty are reimbursed lodging expenses consistent with the general principles discussed in 55 Comp. Gen. 856, supra. That fact does not, however, preclude the Secretary of State from exercising his authority under Section 131(b) of Chapter 600 of the Standardized Regulations to proscribe reimbursement for noncommercial lodgings. We note that the Department of Defense is one agency which disallows any reimbursement for lodgings when its civilian employees stay with friends or relatives. Paragraph C4552n of Volume II of the Joint Travel Regulations specifically provides that, for an employee who lodges with friends or relatives, the average cost of lodging will be zero. In B-198349, November 30, 1980, 60 Comp. Gen. _____ we recognized that the Department of Defense acted properly in similarly precluding reimbursement for lodgings costs when a military member lodges as the guest of friends or relatives.

Given the breadth of the Secretary of State's authority under Section 131(b) to define the special subsistence expenses allowance and the Executive order's admonition to uniformly administer the allowance with respect to evacuees from different agencies, we are unable to find any impropriety in the Secretary's determination to pay that allowance on the same basis as certain other agencies pay travel per diem.

[As for the action of AID headquarters, this action was not only proper but required under the regulations.] This is the import of Standardized Regulation, Section 131(b)(3), which provides for the authorizing officer to pay a lower rate for employees whose necessary living expenses are less than the maximum rate determined by the Secretary of State under Sections 131(b)(1) and (2). The discretion afforded the evacuees' agency, through the authorizing officer, is to limit reimbursement where appropriate but not to increase it. Therefore, when the Secretary of State validly used his authority to preclude reimbursement of lodging expenses for evacuees staying with friends and relatives, the only discretion available to the authorizing officer was to further limit that reimbursement.]

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Accordingly, (the evacuees may not be reimbursed for noncommercial lodging expenses they may have incurred after December 15, 1979.)

Milton J. Aroslan

Acting Comptroller General
of the United States